

In the Matter of:)
)
Complaint of Gary Ledford on) Docket No.
HIGH DESERT POWER PROJECT) 97-AFC-1C (C1)
WATER ISSUES) Complaint-1
)

MONDAY, JANUARY 14, 2002

10:10 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Laurie, Presiding Member
Robert Pernell, Associate Member
Scott Tomashefsky, Advisor
Susan Gefter, Hearing Officer

STAFF PRESENT

Paul Kramer, Staff Counsel
Bob Haussler
Steve Munro

PUBLIC ADVISER

Robertta Mendonca

COMPLAINANT

Gary A. Ledford
Jess Ranch

REPRESENTING THE RESPONDENT

Michael J. Carroll, Attorney
Latham and Watkins

Thomas M. Barnett, Vice President and Project
Manager
High Desert Power Project LLC

Andrew C. Welch, Vice President
Constellation Power Source

ALSO PRESENT

Norman Caouette
Kirby Brill
Mojave Water Agency

Laurie Okun
LaHanton Regional Board

I N D E X

	Page
Proceedings	1
Introductions	1
Opening Remarks	4
Presiding Member Laurie	4
Hearing Officer Gefter	6
Proposals for Stipulated Facts	8
Complainant	8
Respondent	18
CEC Staff	19
Conditions of Certification	30
Review Witness/Exhibit Lists	34
Committee Order	77
Adjournment	80
Certificate of Reporter	81

1 P R O C E E D I N G S

2 10:10 a.m.

3 PRESIDING MEMBER LAURIE: Good morning,
4 ladies and gentlemen. My name is Robert Laurie,
5 I'm Presiding Member of the Siting Committee.
6 Along with my Associate Member, Commissioner
7 Pernell, we have been designated to hear the
8 matter at hand.

9 The matter at hand is a complaint filed
10 by Mr. Ledford regarding compliance of conditions
11 of the High Desert Power project.

12 For purposes of introduction Mr. Scott
13 Tomashefsky is to my left. Mr. Tomashefsky is my
14 Senior Advisor. To my right is Ms. Susan Gefter,
15 the Hearing Officer assigned to this matter. Ms.
16 Gefter will administer these proceedings.

17 Commissioner Pernell is entering the
18 room and is present. And with him will be his
19 Advisor, Ms. Ellie Townsend-Smith.

20 Also present in the room is Roberta
21 Mendonca, the Public Adviser.

22 Let me continue with introductions
23 before I offer an introductory set of remarks.
24 We'll call Mr. Ledford the complainant. Mr.
25 Ledford, will you introduce yourself, please.

1 MR. LEDFORD: I'm Gary Ledford, the
2 complainant.

3 PRESIDING MEMBER LAURIE: Thank you.
4 The respondent, High Desert Power project. And,
5 Mr. Carroll, if you could introduce yourself and
6 the members of your party that are present,
7 please.

8 MR. CARROLL: My name is Mike Carroll;
9 I'm with Latham and Watkins. I'm here on behalf
10 of High Desert Power project. With me is Thomas
11 Barnett and Andrew Welch with High Desert Power
12 project LLC.

13 PRESIDING MEMBER LAURIE: Thank you.
14 Staff, if you could introduce yourself and members
15 present at the table, please.

16 MR. KRAMER: Staff Counsel Paul Kramer.
17 And to your right is Bob Haussler from the
18 Environmental Office; and to your left is Steve
19 Munro, the Compliance Project Manager.

20 PRESIDING MEMBER LAURIE: Thank you,
21 gentlemen. Ms. Mendonca, would you like to
22 acknowledge your presence and offer any comment at
23 this time, please.

24 MS. MENDONCA: Good morning, thank you
25 very much, Commissioner Laurie. Roberta Mendonca

1 for the Public Adviser's Office. Thank you.

2 PRESIDING MEMBER LAURIE: We do have
3 parties on the telephone. This is being
4 teleconferenced. It's also being transcribed I'd
5 like to note.

6 Could you identify yourselves for the
7 record, please.

8 MS. OKUN: This is Laurie Okun; I
9 represent the LaHanton Regional Board.

10 PRESIDING MEMBER LAURIE: Thank you,
11 Laurie.

12 MR. CAOUETTE: Good morning, Norman
13 Caouette with the Mojave Water Agency.

14 HEARING OFFICER GEFTER: That's Norman
15 Caouette. Mr. Caouette, for the record because
16 this is being transcribed, could you spell your
17 name for us, please?

18 MR. CAOUETTE: Certainly.
19 C-a-o-u-e-t-t-e.

20 MR. BRILL: Kirby Brill with the Mojave
21 Water Agency on the phone, as well.

22 HEARING OFFICER GEFTER: Would you spell
23 your name for us, please.

24 MR. BRILL: First name, K-i-r-b-y, last
25 name B-r-i-l-l.

1 HEARING OFFICER GEFTER: Thank you. I
2 understand Mr. John Roberts of Victorville is on
3 the phone? Mr. Roberts?

4 PRESIDING MEMBER LAURIE: Evidently not
5 yet. I know his office was on the phone, so we
6 expect Mr. Roberts to be joining us.

7 Just a moment for introduction, if I
8 might. This is a prehearing conference, and the
9 purpose of the prehearing conference is to set the
10 scope and the manner in which the conference is
11 going to be held, effective Wednesday.

12 The conference is pursuant to a
13 complaint filed by Mr. Ledford. The complaint
14 makes a number of allegations. We are
15 interpreting those allegations as alleging
16 violations of conditions of the approval of the
17 project, because that is the only matter for which
18 we have jurisdiction.

19 It is not our intent, and we will not
20 address any issues that do not bear a direct
21 relationship with the conditions and their
22 compliance.

23 Therefore, all discussions will be
24 centered about an identification of the conditions
25 alleged to be violated, and the basis of the

1 alleged violations.

2 We will determine whether there's any
3 evidence to proceed with a further examination of
4 the allegations; the extent of that; and the scope
5 of the analysis that will be conducted so that the
6 Commission can determine if there has been any
7 violations, the nature and scope of those
8 violations. And then determine an appropriate
9 remedy if such violations exist.

10 We will also look at the parties'
11 proposed witness lists and exhibits. This
12 Committee will make a ruling as to permitted
13 witnesses, permitted exhibits, the nature and
14 scope and length of the testimony, having
15 determined which of such is relevant to the
16 allegations at hand.

17 Mr. Ledford has also made a series of
18 discovery requests. We will conduct the same
19 analysis in regards to that request.

20 Mr. Ledford does have the burden of
21 proof in providing evidence to support the
22 complaint. The respondent, the operator, has the
23 burden of establishing compliance with the
24 conditions of certification.

25 Staff has the responsibility to inform

1 the Commission, the responsible agencies and the
2 parties if the respondent has failed to comply
3 with the conditions. And if so, what action the
4 respondent should take to cure the noncompliance.

5 At this point I'd like to ask Ms.
6 Gefter -- before I do that let me welcome
7 Commissioner Pernell and ask Commissioner Pernell
8 if Commissioner Pernell has any opening comments.

9 ASSOCIATE MEMBER PERNELL: Thank you,
10 Commissioner Laurie. I don't have any comments at
11 this time.

12 PRESIDING MEMBER LAURIE: Thank you,
13 sir. At this time I'd ask Hearing Officer Gefter
14 to review the process and to deal with the issue
15 of proposals for stipulations. Ms. Gefter.

16 HEARING OFFICER GEFTER: Thank you,
17 Commissioner Laurie. The first thing I did want
18 to welcome the water agencies, the individuals on
19 the phone who have called in. If you would be
20 patient until we get to issues in which we would
21 ask you to comment, it may take a little bit of
22 time, but we appreciate your patience and your
23 participation.

24 PRESIDING MEMBER LAURIE: Just let me
25 interrupt quickly. I would hope that your

1 patience at this point will be a good investment
2 of time, because it may save us all a lot of time
3 over the next couple days. So one minute invested
4 today may save us some hours over the next couple
5 days. So your participation today is appreciated.

6 HEARING OFFICER GEFTER: Thank you. I
7 wanted to talk about the agenda. Again, we're
8 going to repeat what Commissioner Laurie mentioned
9 earlier, but again, our first inquiry will be
10 looking at the conditions of certification that we
11 identified in our notice of hearing. And we will
12 consider whether the required compliance documents
13 have been filed.

14 And then after that we will review the
15 parties' witness lists and the proposed exhibits.
16 We got quite a number of proposed exhibits
17 submitted both by Mr. Ledford and by the
18 respondent. And we want to again try to go
19 through those exhibits to determine whether any of
20 them should be considered for the record.

21 And then we will discuss finally the
22 discovery request that Mr. Ledford has filed.
23 That would be the last item on the agenda.

24 What we want to do right now is the
25 complainant and respondent have filed proposals

1 for stipulated facts. We saw those documents.
2 And we've asked the parties to review those
3 proposals and indicate areas of agreement.

4 We'd like you to address that at this
5 time. Mr. Ledford, do you want to go first.

6 PRESIDING MEMBER LAURIE: Mr. Ledford,
7 you have to bring that microphone very close to
8 you otherwise it will not pick it up.

9 MR. LEDFORD: How about now, is that
10 working?

11 PRESIDING MEMBER LAURIE: Thank you.

12 MR. LEDFORD: Okay, I have agreed to
13 stipulate to agreeing to in High Desert Power's
14 proposed stipulations to stipulation A,
15 stipulation B --

16 HEARING OFFICER GEFTER: Wait, Mr.
17 Ledford, wait a second.

18 MR. LEDFORD: How would you like this to
19 be handled?

20 HEARING OFFICER GEFTER: I want to make
21 sure that the Commissioners have copies of those.

22 ASSOCIATE MEMBER PERNELL: There's two
23 dates here, one is January 11 and one is I think
24 the 7th.

25 HEARING OFFICER GEFTER: You are

1 referring to the respondent's proposed
2 stipulations?

3 MR. LEDFORD: Exactly, contained in HDP
4 position statement which begins on page 2.

5 HEARING OFFICER GEFTER: Right. And
6 that's a document that was filed January 11th.
7 All right. Would you wait a second and let me
8 make sure that the Committee Members have a copy
9 of that document.

10 All right, staff has a copy, is that
11 right?

12 MR. KRAMER: Yes.

13 HEARING OFFICER GEFTER: We're ready to
14 go, Mr. Ledford, let's proceed now.

15 MR. LEDFORD: Would you like this to be
16 read?

17 HEARING OFFICER GEFTER: Start at the
18 beginning, yes.

19 MR. LEDFORD: Would you like them to be
20 read or just --

21 HEARING OFFICER GEFTER: Yes.

22 MR. LEDFORD: -- the numbers? Okay. I
23 am prepared to stipulate that the High Desert
24 Power project is a nominal 720 megawatt natural
25 gas fired electrical power plant located at a site

1 on the former George Air Force Base in the City of
2 Victorville. That's contained in paragraph A.

3 I'm prepared -- I'm sorry?

4 MR. KRAMER: Would it be helpful for us
5 to chime in on each of these to save some time?

6 HEARING OFFICER GEFTER: Yes.

7 MR. CARROLL: Staff would so stipulate.

8 MR. LEDFORD: I'm prepared to stipulate
9 an application for certification, AFC, of the
10 project was submitted to this Commission on June
11 30, 1997. And the Commission accepted the
12 application as complete on December 3, 1997.

13 The Commission Staff issued its final
14 assessment of the project in January of 1999. The
15 Project Siting Committee issued its proposed
16 decision on the project on December 15, 1999.

17 The public evidentiary hearing on the
18 proposed decision was held January 27, 2000. A
19 revised proposed decision was issued by the
20 Project Siting --

21 PRESIDING MEMBER LAURIE: Wait a minute.
22 Did you skip the sentence that the Project Siting
23 Committee issued its proposed decision on December
24 15th? Did we skip that? The Project Siting
25 Committee issued its proposed decision on the

1 project on December 15, 1999.

2 MR. LEDFORD: I'm stipulating to that,
3 as well. I did skip it, thank you.

4 A public evidentiary hearing on the
5 project decision was held on January 27, 2000. A
6 revised proposed decision was issued by the
7 Project Siting Committee on March 31, 2000. The
8 Commission adopted the revised proposed decision
9 on May 3, 2000. That's contained in paragraph B.
10 Construction of the project commenced on
11 May 17, 2000, as contained in paragraph C.

12 MR. KRAMER: As to B, staff would
13 stipulate. As to C, staff believes that the date
14 of construction was later than that. We could not
15 stipulate.

16 MR. CARROLL: Point of clarification.
17 In restating paragraph C, Mr. Ledford, I think,
18 inadvertently said May 17, 2000. It's May 17,
19 2001.

20 MR. LEDFORD: Correct.

21 Moving to paragraph F, I'm prepared to
22 stipulate that the peak flow demand to meet
23 project cooling needs and injection for storage is
24 5800 gallons per minute.

25 MR. KRAMER: Staff would agree.

1 MR. LEDFORD: Paragraph J, I'm prepared
2 to stipulate that High Desert Power proposes to
3 construct a water supply line which is 24 inches
4 in diameter.

5 Moving to paragraph --

6 HEARING OFFICER GEFTER: Staff?

7 MR. KRAMER: Yes, we would so stipulate.
8 Same as to F, I'm not sure we said that.

9 MR. LEDFORD: Moving to paragraph O, I'm
10 prepared to stipulate that HDPP has not commenced
11 banking of State Project water.

12 MR. KRAMER: Staff agrees.

13 MR. LEDFORD: Paragraph P, I believe
14 that we have an agreement on some modified
15 language. I will read it: HDPP has submitted to
16 the Regional Water Quality Board of LaHanton
17 Region, RWQCB, and the Commission, a revised
18 report of waste discharge and an anti-degradation
19 analysis for the proposed High Desert Power
20 project groundwater banking operation dated May
21 2001 from the report in the record. I believe
22 that report was exhibit 54.

23 HEARING OFFICER GEFTER: Would you
24 repeat that last?

25 MR. LEDFORD: From the report in the

1 record, which I believe was exhibit 54.

2 MR. KRAMER: Which record is that then?

3 I'm confused.

4 MR. LEDFORD: That would be in the
5 record of decision. The decision, exhibits in the
6 decision.

7 MR. KRAMER: But the decision was
8 rendered in 2000, so it couldn't possibly have
9 included a document dated 2001.

10 MR. LEDFORD: No, I'm saying that it's
11 revised. I added the word revised in line 16
12 after "a", "a revised report".

13 MR. KRAMER: Okay, now I understand.

14 MR. LEDFORD: In other words they
15 submitted a revised report. That's what I'm
16 stipulating to.

17 MR. KRAMER: We would so stipulate.

18 MR. CARROLL: Respondent would so
19 stipulate, as well.

20 MR. LEDFORD: Moving to paragraph Q, I
21 would stipulate that High Desert Power project has
22 submitted to the Regional Water Quality Control
23 Board and the Commission supplemental reports of
24 waste discharge dated June 20, 2001, June 29,
25 2001, and July 30, 2001 as exhibits, as

1 respondent's exhibits, I should say, and I'm going
2 to look those up here.

3 MR. CARROLL: These three documents were
4 exhibits Q, R and S to respondent's answer. And
5 we would stipulate to identifying them as such.

6 MR. KRAMER: Staff agrees.

7 MR. LEDFORD: Moving to paragraph R, I'm
8 prepared to stipulate that High Desert Power
9 submitted to the Regional Water Quality Control
10 Board and the Commission a supplemental anti-
11 degradation analysis dated August 23, 2001, as
12 respondent's exhibit --

13 MR. CARROLL: The document was
14 respondent's exhibit U to its answer to the
15 complaint. And we would stipulate to its
16 identification as such.

17 MR. KRAMER: Staff agrees.

18 MR. LEDFORD: Moving to paragraph CC, I
19 would stipulate that the Regional Water Quality
20 Control Board has not issued waste discharge
21 requirements or a waiver of discharge requirements
22 for the project. HDPP has not submitted any such
23 document to the Commission.

24 MR. KRAMER: Staff agrees.

25 MR. LEDFORD: Moving to paragraph CE, I

1 would stipulate that High Desert Power project has
2 not begun implementation of a water treatment and
3 monitoring plan or submitted any annual monitoring
4 results in connection therewith.

5 MR. KRAMER: Staff agrees.

6 MR. LEDFORD: Moving to paragraph FF,
7 I'd ask staff if Mr. Larson is going to be a
8 witness.

9 MR. KRAMER: He wasn't listed in our
10 report, --

11 MR. LEDFORD: No, he was not.

12 MR. KRAMER: -- and we have not changed
13 our mind on that point, so, no.

14 MR. LEDFORD: Is Steve Munro going to be
15 a witness?

16 MR. KRAMER: Yes, as described in our
17 prehearing, forgot what we called that document,
18 but anyway, the document we filed on Friday.
19 Position statement.

20 MR. LEDFORD: Okay, moving to paragraph
21 GG, I would stipulate that the letter from Steve
22 Munro, California Energy Commission, to Neil
23 Pierce of High Desert Power project, dated May 17,
24 2001, attached to respondent's answer as exhibit K
25 is a true and correct copy of what it purports to

1 be and can be admitted into evidence without the
2 sponsorship of any party provided that Mr. Munro
3 is made available to be examined on the letter.

4 MR. KRAMER: That's acceptable to staff.

5 MR. CARROLL: That would not be
6 acceptable to respondent. Respondent's view is
7 that these documents listed in paragraphs FF
8 through KK should be admissible whether or not the
9 parties to those documents are presented as
10 witnesses during the evidentiary hearings.

11 (Pause.)

12 MR. LEDFORD: All right, that would be
13 the extent of my stipulations.

14 PRESIDING MEMBER LAURIE: Let me first
15 advise all parties that it is my intent to not
16 comply with formalized rules of evidence in this
17 proceeding. My goal is to get to the facts.
18 We're not practicing in front of the United States
19 Supreme Court here.

20 So, whether there's a party here,
21 whether there's not a party here, as long as it is
22 legal to admit a document I'm going to admit a
23 document. And so we're not going to spend time
24 debating those kinds of issues.

25 Do all parties understand that?

1 MR. CARROLL: Yes.

2 PRESIDING MEMBER LAURIE: Okay, thank
3 you. Okay, where are we?

4 HEARING OFFICER GEFTER: Okay. So we
5 have a series of stipulations. Does the
6 respondent, do you have any other proposals at
7 this point for stipulation?

8 MR. KRAMER: If I might, --

9 HEARING OFFICER GEFTER: Yes.

10 MR. KRAMER: -- though, on that point
11 that Commissioner Laurie raised, I know in the
12 case of some of the documents that Mr. Ledford has
13 served that staff may be very reluctant to just
14 have them come in for the truth of much of
15 anything, because they appear to be lacking in
16 context in some cases. We may have to argue about
17 that.

18 PRESIDING MEMBER LAURIE: My reference
19 was to relevant documents. If documents are not
20 relevant they will not be admitted. And my
21 anticipation is that a good portion of the
22 documentation that has been submitted is not
23 relevant to the issues at hand. And we are -- all
24 parties are free to argue relevancy.

25 MR. KRAMER: Actually I was speaking to

1 the case where I really want to have the maker of
2 the document present so he could be questioned
3 about it. And just seeing the document for the
4 first -- or knowing that it was an issue on
5 Friday, it's a little bit difficult for me to
6 arrange all that by Wednesday.

7 PRESIDING MEMBER LAURIE: I understand.
8 And that, to me, is a different question than
9 whether we're going to bar a piece of paper
10 because its author is not present.

11 MR. KRAMER: Okay, I understand.

12 MR. CARROLL: Point of clarification and
13 I'll respond to Ms. Gefter's question. I seem to
14 have lost track of my notes with respect to
15 proposed stipulation D, which is on line 17 of
16 page 2.

17 MR. LEDFORD: Sorry, I'm -- we'll move
18 back to D, I guess. I'm prepared to stipulate
19 that the High Desert Power project expects to
20 begin its groundwater recharge program in
21 approximately September 2000.

22 MR. KRAMER: Staff agrees.

23 HEARING OFFICER GEFTER: September of
24 2002.

25 MR. LEDFORD: 2002, I'm sorry. And I

1 would stipulate to E, the High Desert Power
2 project expects to commence commercial operation
3 of the project in the spring of 2003.

4 MR. KRAMER: Staff agrees.

5 MR. CARROLL: Thank you. With response
6 to your question, Ms. Gefter, we do not have any
7 additional proposed stipulations at this time.

8 PRESIDING MEMBER LAURIE: Are there any
9 proposed stipulations from staff in regards to Mr.
10 Carroll's proposals, in addition to what Mr.
11 Ledford has stipulated to? That is, are you in
12 agreement with items in addition to those that Mr.
13 Ledford stipulated to?

14 MR. KRAMER: Yes.

15 PRESIDING MEMBER LAURIE: Because there
16 were numerous items that were skipped over.

17 MR. KRAMER: Would you like me to read
18 these, because I could probably say everything but
19 two or three of them. Is that -- how would you
20 like me to approach this?

21 HEARING OFFICER GEFTER: In other words
22 you're offering to cosponsor some of these
23 stipulations?

24 MR. KRAMER: Most of them.

25 HEARING OFFICER GEFTER: Tell us the

1 ones that staff does not stipulate to.

2 MR. KRAMER: Okay. We've already
3 discussed C, we had a disagreement as to the date.

4 PRESIDING MEMBER LAURIE: What is the
5 date that you believe construction commenced on?

6 MR. KRAMER: Approximately June 30th of
7 2001 when the first foundations for the cooling
8 towers were poured.

9 PRESIDING MEMBER LAURIE: And, Mr.
10 Carroll, where are you getting May 17th?

11 MR. LEDFORD: I could tell you where I'm
12 getting it. Would that help?

13 PRESIDING MEMBER LAURIE: Okay, in a
14 moment.

15 MR. LEDFORD: I'm getting it from the
16 compliance documents that were filed with the
17 Commission. And it's listed as date the
18 construction started was actually May 16th. But
19 for a day I wasn't going to object.

20 MR. KRAMER: I think this is a matter,
21 it's a --

22 MR. LEDFORD: A silly matter.

23 MR. KRAMER: -- it's a semantic matter
24 as far as definitions go. We're operating under
25 the definition in the Warren Alquist Act which

1 compliance staff interprets construction to start
2 when there is actual work on a structure, as
3 opposed to mobilization and other activities,
4 rough grading and that sort of thing.

5 PRESIDING MEMBER LAURIE: Okay. Of
6 course, it's only going to become relevant as
7 applicable to those conditions that are at issue.

8 MR. KRAMER: I don't think it's going to
9 matter in this particular case. But we're just
10 trying to be accurate.

11 PRESIDING MEMBER LAURIE: Okay, thank
12 you.

13 HEARING OFFICER GEFTER: And, Mr.
14 Carroll, did you have a comment? Or do you agree
15 with what we just discussed?

16 MR. CARROLL: I agree with what you just
17 discussed. I don't believe it's going to be
18 relevant.

19 MR. KRAMER: Then our next point of
20 departure is stipulation H, and that's -- we can't
21 find the reference at this point. It's supposed
22 to reference to a 24-inch supply pipe. But we
23 understand and believe that that was discussed
24 during the course of the siting case.

25 So, again I think our refusal to

1 stipulate there is more a question of technical
2 accuracy.

3 The next is stipulation N; there's a lot
4 of interpretation involved in that. Mr. Munro is
5 planning on visiting the site again prior to the
6 hearing, if he has the time; and he's going to
7 ascertain exactly the status of the water
8 treatment facilities for his own information. But
9 we're not going to stipulate to that today as --

10 PRESIDING MEMBER LAURIE: And that was
11 letter?

12 MR. KRAMER: N, whether the water
13 treatment facilities have begun construction.
14 That's N, as in Nancy.

15 We would stipulate to the --

16 ASSOCIATE MEMBER PERNELL: Excuse me.

17 MR. KRAMER: -- remainder --

18 HEARING OFFICER GEFTER: Just a
19 moment, --

20 ASSOCIATE MEMBER PERNELL: I have a
21 question on this.

22 MR. KRAMER: -- of the --

23 HEARING OFFICER GEFTER: -- Mr. Kramer.

24 ASSOCIATE MEMBER PERNELL: On N, it just
25 simply says the project's water treatment facility

1 has not yet been constructed. Isn't that a matter
2 of going out and seeing whether it's up or not?

3 MR. KRAMER: Well, does it mean fully
4 constructed? started? Have they started the
5 grade?

6 ASSOCIATE MEMBER PERNELL: Well, it says
7 has not yet been constructed.

8 MR. KRAMER: If you interpret that to
9 ask if they've been completed, then clearly the
10 answer is no. If it's --

11 ASSOCIATE MEMBER PERNELL: I don't know.
12 Who wrote this one? What's the --

13 MR. KRAMER: Mr. Carroll wrote it.

14 MR. CARROLL: I did write it. We would
15 propose modifying it to read: The project's water
16 treatment facilities has not yet been completed.
17 The reason that this fact is relevant is that
18 there's an allegation as to whether or not the
19 water treatment facilities are being used in a
20 manner consistent with the conditions of
21 certification.

22 Our point in getting the stipulation on
23 the record is that it's impossible at this point
24 for them to be used in any other way because it
25 hasn't been completed yet.

1 So, the intent here was completed, as
2 opposed to constructed.

3 MR. KRAMER: We could agree with that
4 stipulation.

5 PRESIDING MEMBER LAURIE: Mr. Ledford,
6 do you agree that the water treatment facilities
7 have not, as yet, been completed?

8 MR. LEDFORD: I agree it hasn't been
9 completed. I don't know what the status is
10 because I haven't been on the project site.

11 PRESIDING MEMBER LAURIE: Okay, thank
12 you.

13 HEARING OFFICER GEFTER: Do we have
14 agreement on the language of this stipulation?

15 MR. KRAMER: Staff agrees.

16 HEARING OFFICER GEFTER: Mr. Ledford, do
17 you agree with the language, as modified?

18 MR. LEDFORD: The project's water
19 treatment facilities have not yet been completed.
20 I guess. If we could have a stipulation that they
21 have been started. They are under construction,
22 physically under construction.

23 (Pause.)

24 MR. CARROLL: I apologize. The reason
25 we're conferring on this is that since there's no

1 precise definition of what portions of the project
2 are considered the water treatment facilities and
3 which are not, it's a little difficult to say.

4 But I think we're prepared to stipulate
5 that construction has commenced. Frankly, we
6 don't think the commencement of the construction
7 of those facilities is relevant to any of the
8 inquiries before the Committee. Therefore, we
9 don't have any problem stipulating to that.

10 HEARING OFFICER GEFTER: So the revised
11 language is the project's water treatment
12 facilities are under construction but have not yet
13 been completed? Is that the proposed stipulation?

14 MR. LEDFORD: Yes.

15 MR. CARROLL: That would be acceptable
16 to respondent.

17 MR. KRAMER: Acceptable to staff.

18 MR. LEDFORD: Before we leave this
19 topic, if we can, not stipulations but further in
20 High Desert Power disputed issues, I don't know if
21 I can cut some of those hours off that
22 Commissioner Laurie was talking about, but if we
23 went to page 10 and we're talking about whether
24 compliance with soil and water condition 13, I
25 think that 13 is prospective. It's not really a

1 direct part of my complaint. And I don't disagree
2 with High Desert Power it is not ripe for review.

3 I think that the Commission had said
4 that they would look at those conditions in their
5 order. So I'm not certain where the Commission is
6 on that issue. But I don't think it was
7 specifically my issue, other than on a prospective
8 basis.

9 PRESIDING MEMBER LAURIE: Thank you.

10 ASSOCIATE MEMBER PERNELL: Just so I can
11 follow this, so you're referring to page 10
12 commencing with line 8 and ending with line 14?

13 MR. LEDFORD: Right. High Desert Power
14 has indicated that this is an issue of dispute
15 between myself and them, and I'm not certain that
16 it is. I'm not certain that's an issue of dispute
17 between myself and High Desert Power, other than
18 as a prospective issue.

19 And it's not addressed directly in any
20 one of the six separate complaint issues that I've
21 placed before the Commission.

22 HEARING OFFICER GEFTER: So you would
23 not oppose the Committee severing the allegation
24 as to condition 13 --

25 MR. LEDFORD: It's not ripe --

1 HEARING OFFICER GEFTER: -- from the
2 complaint?

3 MR. LEDFORD: On the basis that it's not
4 ripe.

5 HEARING OFFICER GEFTER: Okay. Thank
6 you, Mr. Ledford. We will rule on that later in
7 the proceeding.

8 MR. LEDFORD: I think that's all.

9 HEARING OFFICER GEFTER: Mr. Kramer,
10 does the staff have any other stipulations -- any
11 other facts that you would not agree with that are
12 proposed by respondent's stipulations?

13 MR. KRAMER: No, from where we left off,
14 we agreed with the remainder of the proposed
15 stipulations from HDPP.

16 (Pause.)

17 HEARING OFFICER GEFTER: Are we ready to
18 move on to another topic, then? Or are you still
19 looking through your stipulations?

20 MR. KRAMER: Oh, no, no, we're okay with
21 the rest of them.

22 HEARING OFFICER GEFTER: All right,
23 thank you. Let's move on then.

24 As we mentioned earlier we wanted to
25 review the conditions --

1 MR. CARROLL: I apologize for
2 interrupting, Ms. Gefter. There were some
3 proposed stipulations submitted by Mr. Ledford to
4 the CEC Staff. And we are prepared to stipulate
5 to some of the items in that document.

6 HEARING OFFICER GEFTER: Oh. All right,
7 thank you.

8 MR. CARROLL: I'm looking at a document
9 that was attached to a December 26, 2001 letter
10 from Mr. Ledford to Mr. Kramer. It indicates it
11 was sent by email only.

12 It's a 34-page document, and then
13 attached to that was a six-page proposed
14 stipulation.

15 (Pause.)

16 HEARING OFFICER GEFTER: Okay, we have a
17 copy here to look at.

18 MR. CARROLL: The respondent would be
19 prepared to stipulate to numbered paragraph 7 on
20 page 2 of that document which reads, after
21 condition 19, a water storage agreement between
22 the Watermaster and VVWD, either in draft form or
23 otherwise, has not been submitted to the CEC for
24 review and/or approval.

25 MR. KRAMER: Staff would agree with that

1 stipulation.

2 MR. CARROLL: We would also be prepared
3 to stipulate to numbered paragraph 9 which reads,
4 as to condition 12, there is no CEC approved water
5 treatment plan that demonstrates that the -- State
6 Water Project water, prior to injection, shall be
7 the levels approaching background levels of the
8 receiving aquifer as required by this condition
9 12.

10 MR. KRAMER: Staff would agree.

11 MR. CARROLL: We would also be prepared
12 to stipulate to paragraph 10 which reads, there
13 has been no plan submitted to the CEC by HDPP that
14 demonstrates the plan complies with the
15 requirements identified in the report of waste
16 discharge prepared by Bookman Edmonston in 1998 as
17 required by condition 12.

18 MR. KRAMER: Staff agrees.

19 MR. CARROLL: We would also stipulate to
20 numbered paragraph 13 which reads, as to condition
21 2, as of December 18, 2001, HDPP has not supplied
22 to the CEC CPM a copy of any application for a
23 water storage agreement with the MWA.

24 MR. KRAMER: Staff would agree.

25 MR. CARROLL: And we would stipulate to

1 numbered paragraph 14 which reads, as of December
2 18, 2001, there is no approved water storage
3 agreement between MWA and HDPP.

4 MR. KRAMER: Staff agrees.

5 HEARING OFFICER GEFTER: Is that it?

6 MR. CARROLL: Yes, that concludes our
7 stipulations.

8 HEARING OFFICER GEFTER: Thank you. I
9 expect during the course of the hearings we will
10 have an explanation of what this report of waste
11 discharge prepared by Bookman Edmonston refers to?

12 MR. CARROLL: Yes.

13 HEARING OFFICER GEFTER: All right. And
14 so we're going to move on now. On the basis of
15 those stipulations we can go forward and eliminate
16 some of the time it would have taken to get to
17 those facts.

18 We're going to talk about condition 1E.
19 The condition states that the project's water
20 supply facilities shall be appropriately sized to
21 meet project needs. And that the verification
22 requires the project owner to provide final design
23 drawings of the project's water supply facilities
24 30 days before commencing project construction.

25 Complainant Mr. Ledford alleges that no

1 final design drawings were filed prior to
2 construction. The respondent has indicated that
3 they filed the final drawings on March 27, 2001,
4 and staff seems to agree with that statement.

5 We wanted to ask Mr. Ledford, first of
6 all, are you going to submit evidence to rebut the
7 timely filing of the final design plans? And
8 also, will you be able to show that the decision
9 was changed in any way by the design plans that
10 the pipeline was not originally going to be 24
11 inches, as the respondent has alleged?

12 MR. LEDFORD: The evidence, I believe
13 that I've pretty well identified in evidentiary
14 documents. The HDPP submittals amount to, in
15 relation to the water supply facilities, as I
16 understand it, a schematic drawing, potentially a
17 schematic drawing that was produced to me as a
18 part of the documents, which would have been the
19 documents that the Commission ordered to be
20 produced. And they did that in the form of an
21 answer to the complaint with exhibits.

22 And so my understanding of that is that
23 the exhibits they've provided demonstrate that
24 compliance was a schematic drawing of the
25 treatment plant.

1 I did not find any other drawings of the
2 water supply facilities which would have been
3 pipelines, booster pumps, well-fields, those types
4 of things, within those exhibits.

5 On the other hand, I have proposed
6 exhibits that -- I think there's a couple of
7 thresholds here, and I've identified them in my
8 position statement.

9 We sort of have two pieces to the water
10 supply facilities. One is the pipelines and
11 wells, and one is the treatment facility. So you
12 can't have one without the other. In order to
13 make the water supply plan work, you have to have
14 it all.

15 In relation to the water treatment
16 plant, they did submit a schematic drawing with a
17 letter from an equipment vendor identifying the
18 equipment that they intended to supply. And that
19 was a reverse osmosis water treatment plant.

20 Subsequent to that the Commission issued
21 a will-proceed order on the project. Now, they
22 submitted lots of documents, lots of plans to the
23 Commission. The Commission had a big role in
24 looking at all the things they had to look at.

25 But I would assume that the water

1 treatment plant they submitted, and what they've
2 said that they had approved was a reverse osmosis
3 treatment plant, one component part.

4 In relation to the water supply lines, I
5 believe the record is quite clear that the water
6 supply lines were oversized. Both testimony from
7 my witnesses, myself and also from the CEC Staff
8 said the water supply lines, as well as other
9 utilities, were oversized.

10 So the issue wasn't that they weren't.
11 The issue was that if they were, and I think the
12 record will support this, if they were that they
13 had to be redone. And that High Desert had some
14 obligation to provide the plans, and final plans.
15 And I don't think that was done. I believe my
16 evidence will support that.

17 PRESIDING MEMBER LAURIE: Well, okay.
18 Now, I'm trying to determine what questions are
19 relevant to this issue.

20 In both the condition, itself, and the
21 verification which requires submittal of plans, I
22 would expect to see evidence of the final design
23 drawings, one. And then I would expect to hear a
24 discussion about appropriate size to meet project
25 needs.

1 That's your complaint, is it not, Mr.
2 Ledford?

3 MR. LEDFORD: That is my complaint.
4 That is my evidence. That will be my witness'
5 testimony. And I suspect at the end of the day it
6 will be other witnesses' testimony, as well.

7 PRESIDING MEMBER LAURIE: Okay. So,
8 let's address the witnesses. What witnesses do we
9 have proposed to deal with the question of whether
10 a 24-inch pipeline is the appropriate size
11 pipeline to meet the project needs?

12 First of all, does anybody object to
13 forming the question on that basis? Is that the
14 correct question we need to ask? Does anybody
15 have any objection to that?

16 MR. CARROLL: Respondent's only
17 objection is that that question was squarely
18 before the Siting Committee and decided
19 conclusively in the decision.

20 We are prepared to go back over it
21 again, and I think if we are going back over it
22 again that is the proper question.

23 PRESIDING MEMBER LAURIE: Well, but
24 unfortunately the condition was not written so
25 that it said you'll build this thing with a 24-

1 inch pipeline. The condition was written so that
2 it says it has to be appropriate, which raises the
3 issue if Mr. Ledford alleges that the final design
4 drawings have a size that is inappropriate.

5 Now, if the matter was resolved or
6 addressed during the hearings, and I believe it
7 was, because I believe I sat through many hours of
8 that, well then the answer is it has already been
9 considered.

10 So, the amount of testimony required
11 would be minimal. What are the parties' positions
12 in that regard?

13 MR. CARROLL: Respondent would concur it
14 was, to the extent we are talking about -- let's
15 just divide them up so we're clear here, the
16 pipelines first. The size of the pipeline that
17 supplies water to the project has been 24 inches
18 since the beginning. We just all entered into a
19 stipulation that we're constructing a 24-inch
20 pipeline.

21 The question whether or not a 24-inch
22 pipeline was adequate to meet the project's needs,
23 and only the project's needs, was taken up by the
24 Siting Committee, and decided conclusively. And
25 nothing has changed since that time.

1 I agree there should be very minimal
2 testimony on this issue if any at all.

3 MR. LEDFORD: Well, we stipulated that
4 High Desert Power proposes to construct a 24-inch
5 pipeline. Let's start with what we can stipulate
6 to. And the testimony in the record is somewhat
7 voluminous relative to the size of the facilities.
8 And I think that you, Commissioner Laurie, were
9 somewhat exasperated by the amount of testimony
10 that there was.

11 I think the record will show with how
12 you dealt with it at least in the hearings.
13 Certainly nobody knows what your mindset was when
14 you developed the condition. But ultimately the
15 condition doesn't say that they're going to build
16 a 24-inch pipeline, that you decided that that
17 pipeline was the right size.

18 You actually, my memory's just a little
19 vague, but my general recollection was you asked
20 Mr. Welch whether or not it was the right size,
21 and he said it was. If it was the wrong size he
22 would have to review it with his engineers. He'd
23 go back before they constructed the pipelines and
24 make absolutely sure it was the right size.

25 I think at the end of the day you had

1 both your staff -- the CEC Staff saying the
2 pipeline was oversized. You had me saying it was
3 oversized. You had Mr. Beinschroth, who is a
4 civil engineer, saying that he checked the design
5 and it's oversized.

6 And now we're prepared to have the
7 Mojave Water Agency tell you what the design
8 capacity of the line is and how much water they
9 can put in it and what other uses that they have
10 in mind for the same pipeline.

11 So I believe that the evidence in this
12 case will be conclusive that the 24-inch pipeline
13 is over designed for 5800 gallons per minute
14 project.

15 PRESIDING MEMBER LAURIE: Now, Mr.
16 Ledford, does it matter if it's over designed,
17 just so long as its use is limited to servicing
18 the project?

19 MR. LEDFORD: Well, yes, it does,
20 because, you know, I don't think we're here for me
21 to try and make my case, only to tell you what I
22 think the various documents, exhibits are going to
23 say, because, again, there's several component
24 parts to it.

25 MR. CARROLL: If I may just respond. I

1 think Mr. Ledford, in his previous statement,
2 prior to responding to Commissioner Laurie's
3 question, really mischaracterized the evidence
4 that was presented during evidentiary hearings.

5 If I could cite from the Commission
6 decision on page 227, and I quote: The evidence
7 simply does not support Mr. Ledford's conjecture.
8 Direct, uncontradicted testimony establishes that
9 the design capacity of the project pipelines is
10 required to meet project needs. These needs
11 include peak, not just average water flows, in
12 order to transport water both for cooling as well
13 as injection for storage."

14 Again, this issue was squarely before
15 the Committee and it was decided conclusively in
16 the final decision. And what Mr. Ledford is
17 seeking to do is to revisit that discussion upon
18 which we spent many hours.

19 MR. LEDFORD: Actually there's a
20 footnote on that. You may want to read the
21 footnote, as well. I don't have it with me. I
22 just remember there was a footnote.

23 HEARING OFFICER GEFTER: Footnote 55, it
24 says: We have included an additional condition
25 specifying that the water facilities be consistent

1 with the design specifications of the project."

2 MR. KRAMER: If staff could make a
3 comment here. We share High Desert's belief that
4 this was gone over extensively during -- discussed
5 extensively during the siting case, and that
6 nothing has changed. And therefore the issue
7 should be very limited, this discussion.

8 We're especially concerned that Mr.
9 Ledford appears to be wanting to offer reams of
10 testimony to the effect that Victor Valley and
11 other people have this secret plan, or not so
12 secret plan to use the plant. And therefore
13 that's somehow evidence that it's oversized.

14 And if nothing else today I'd like to
15 come away with an understanding about whether any
16 of that testimony is going to come in on Wednesday
17 so I can make my travel plans.

18 MR. LEDFORD: I suspect that that will
19 be something we'll talk about later.

20 PRESIDING MEMBER LAURIE: Okay.

21 MR. KRAMER: Aren't we talking about
22 that issue now, though?

23 PRESIDING MEMBER LAURIE: I'm sorry?

24 MR. KRAMER: We are talking about the
25 issue, issue number 1, to which this evidence that

1 we're concerned about would be directed. So I
2 think this would be the time to determine whether
3 that's relevant evidence.

4 PRESIDING MEMBER LAURIE: Well, yes,
5 sir, we will. I'm not satisfied that we're going
6 to issue a ruling at this moment to meet your
7 pleasure. But we understand the timeliness of it
8 all. We may do it before the parties go home
9 today. We may do it this evening.

10 MR. KRAMER: I'm sorry, I misunderstood
11 the tone of the conversation to be that it would
12 be decided at the hearing.

13 PRESIDING MEMBER LAURIE: No, no. The
14 purpose of today's meeting is to set the
15 parameters of the hearing. We're not going to fly
16 a bunch of folks down there for matters that the
17 Committee does not determine to be relevant.

18 HEARING OFFICER GEFTER: Also, on this
19 condition 1E, we're talking about final design
20 plans. And I would like to know from the staff
21 whether the design plans that were submitted by
22 respondent prior to the letter that authorized the
23 project to go forward and construct, whether those
24 plans that were submitted were considered final
25 design plans, or were they schematics, as

1 Mr. Ledford indicates.

2 MR. MUNRO: They were final design
3 plans.

4 HEARING OFFICER GEFTER: Okay. Were
5 they consistent with design plans from other
6 certification projects, other projects that have
7 licenses that --

8 MR. MUNRO: I'm not aware that we have a
9 requirement for any other cases like that.

10 PRESIDING MEMBER LAURIE: Mr. Munro,
11 you're not being picked up on tape.

12 MR. MUNRO: I'm not aware that any other
13 case requires something like that.

14 HEARING OFFICER GEFTER: But the basis
15 on which the compliance staff authorized the
16 project to go forward and begin construction, were
17 based on those design plans that were submitted by
18 respondent. And you deem them final design plans?

19 MR. MUNRO: Correct.

20 MR. LEDFORD: Are we talking about what
21 respondent has submitted as exhibit L as being the
22 final design plans? I just need a clarification
23 on --

24 (Pause.)

25 MR. LEDFORD: Because that's the only

1 drawings that I have been served with.

2 MR. MUNRO: That appears to be, yes.

3 MR. LEDFORD: Okay. That submittal has
4 nothing in the way of pipelines other than a
5 description. No other description.

6 MR. CARROLL: The cover letter
7 associated with that submittal from Bibb &
8 Associates, dated March 26, 2001, on the first
9 page states, and I quote: The 24-inch diameter
10 pipeline will convey raw State Water Project water
11 from the existing Mojave River pipeline to the
12 High Desert Power project for treatment."

13 I guess I'm not clear on what additional
14 information Mr. Ledford is seeking in that
15 pipeline. It's just a pipe 24 inches in diameter.
16 There isn't too much more to say about it or show
17 about it in a drawing. Just a 24-inch diameter
18 pipe.

19 HEARING OFFICER GEFTER: Are you
20 referring to your exhibit L to respondent's
21 answer?

22 MR. CARROLL: Yes, it's included in
23 exhibit L. And I apologize, the order is a little
24 bit confusing in the exhibit, but if you pass by
25 the drawings you come to a March 27th cover letter

1 from High Desert to Mr. Munro transmitting the
2 information. And then immediately behind that was
3 the March 26th letter from Bibb and Associates to
4 Shirley Pearson at URS, consultants to the High
5 Desert Power project, explaining the contents of
6 the submittal.

7 So the submittal went from Bibb and
8 Associates, to Ms. Pearson. And then Ms. Pearson
9 passed it along to High Desert. And High Desert
10 submitted it to the Energy Commission.

11 PRESIDING MEMBER LAURIE: Okay, I want
12 to move on to condition 2. Condition 2 reads: The
13 project owner shall provide a copy of the storage
14 agreement between Mojave and Victor Valley prior
15 to the initiation of any groundwater banking. And
16 within 15 days of any amendment or renewal of the
17 storage agreement." And requires that a copy be
18 submitted to the project manager.

19 Banking, it is, I believe, stipulated,
20 will not begin until September of 2002. Mr.
21 Ledford, is it your allegation that condition 2 is
22 being violated?

23 MR. LEDFORD: Well, you sort of have the
24 cart before the horse, Commissioner Laurie.

25 PRESIDING MEMBER LAURIE: Okay.

1 MR. LEDFORD: It's a little difficult to
2 have a waste discharge permit when you don't have
3 a water storage agreement. In other words,
4 LaHanton is processing a waste discharge permit
5 based on what they think this application is.

6 They're attempting to do some type of
7 CEQA analysis based on what they think that this
8 application is, and the cumulative impacts on what
9 they think this is. They have no document.

10 You can't put the cart before the horse.
11 I would remind the Commission that we asked the
12 Mojave Water Agency to testify and they did not.
13 We attempted to have subpoenas issued, and we did
14 not get subpoenas.

15 What we did have, though, is we had Mr.
16 Caouette, who came to the Commission at the first
17 hearing and indicated that the water supply
18 agreement was forthcoming and would happen within
19 about two weeks after certification of the
20 project.

21 I would suspect that the reason the
22 Commission adopted this condition -- again we're
23 all speculating, only you know -- is because you
24 thought that the water supply agreement was going
25 to be forthcoming and would be a part of the

1 submittal. And it was only going to be amendments
2 to the agreement that you were really going to be
3 concerned about in condition 2, because condition
4 2 seems to reflect that.

5 At any rate, --

6 HEARING OFFICER GEFTER: One moment, Mr.
7 Ledford.

8 MR. LEDFORD: -- that seems to be the
9 problem.

10 HEARING OFFICER GEFTER: Are you
11 confusing a will-serve letter with the water
12 storage agreement?

13 MR. LEDFORD: No. They don't have a
14 will-serve letter, either.

15 HEARING OFFICER GEFTER: Mr. Caouette,
16 are you still on the line?

17 MR. CAOUETTE: Yes.

18 HEARING OFFICER GEFTER: Do you have
19 some information for us regarding the status of a
20 water storage agreement?

21 MR. CAOUETTE: Yes. I don't exactly
22 recall the -- after that particular hearing,
23 however, we have gone through a couple iterations
24 of a water storage agreement with Victor Valley
25 Water District.

1 I believe that we're very close to
2 having the final document prepared. In fact,
3 we're going to present that storage agreement
4 between Mojave Basin Area Watermaster and Victor
5 Valley Water District at the Watermaster workshop
6 this Wednesday. And I think however it might be
7 modified; it's also scheduled for action by the
8 Watermaster on the 23rd of this month.

9 HEARING OFFICER GEFTER: So do you
10 expect after the 23rd of this month you would have
11 the water storage agreement?

12 MR. CAQUETTE: It's quite possible.

13 PRESIDING MEMBER LAURIE: Okay, I'd like
14 to move on to the next condition, which is
15 condition 11, which requires the project owner to
16 submit an approved waste discharge requirement
17 prior to the start of groundwater banking. Unless
18 Regional Water Quality Control Board decides to
19 waive.

20 And then verification talks about
21 approval of a copy of the waste discharge
22 requirement within 60 days of the start of rough
23 grading. That 60 days from the start of rough
24 grading is probably inconsistent with filing the
25 report prior to the start of any groundwater

1 banking. In which case, the condition would
2 control.

3 Groundwater banking has, of course, not
4 as yet started. So, Mr. Ledford, is it your
5 position that because the verification requires
6 the document to be filed within 60 days of the
7 start of rough grading, that it had to be in at
8 this point?

9 MR. LEDFORD: Yes. Not only that, but I
10 mean this actually leads to -- and the conduct of
11 the applicant would have indicated that the
12 applicant believed that to be the case. My
13 evidence will show that.

14 The applicant's -- we're going back now
15 to exhibit L, and the applicant's filing of
16 completed water supply plans. The applicant's
17 submittal was for reverse osmosis water treatment
18 plant, and all the relevant equipment that would
19 go into it.

20 PRESIDING MEMBER LAURIE: Okay, let me
21 interrupt for a moment. Let me ask a question of
22 staff. When the condition makes reference to an
23 approved waste discharge requirement, is that a
24 piece of paper?

25 MR. MUNRO: Yes.

1 MR. KRAMER: Yes.

2 PRESIDING MEMBER LAURIE: Issued by what
3 entity?

4 MR. KRAMER: The LaHanton Regional
5 Board.

6 PRESIDING MEMBER LAURIE: So in order to
7 determine whether or not there's compliance with
8 this condition you would look for that piece of
9 paper issued by LaHanton?

10 MR. MUNRO: Unless they were waiving it.

11 PRESIDING MEMBER LAURIE: Okay.

12 MR. KRAMER: But even a waiver would
13 have a letter attached to it.

14 PRESIDING MEMBER LAURIE: Okay. To this
15 date has that document been filed?

16 MR. KRAMER: No. In fact, we know from
17 LaHanton that they're looking towards the first
18 part of next month now to have their board
19 consider it.

20 PRESIDING MEMBER LAURIE: And is it your
21 position that the condition does not require that
22 the document be filed until a time prior to
23 banking?

24 MR. KRAMER: That's correct.

25 PRESIDING MEMBER LAURIE: What is your

1 position in regards to the inconsistency relating
2 to the verification?

3 MR. KRAMER: The rule interpretation we
4 apply is that when the verification conflicts with
5 the body of the condition, then the condition will
6 prevail to the extent of conflict.

7 Therefore, that's why we say that the
8 timing requirement is the start of groundwater
9 banking, not this within 60 days of start of rough
10 grading.

11 PRESIDING MEMBER LAURIE: Okay.

12 HEARING OFFICER GEFTER: And we have Ms.
13 Okun who represents LaHanton. Are you still on
14 the line?

15 MS. OKUN: Yes, I am.

16 HEARING OFFICER GEFTER: Could you
17 verify that the board will be considering a waiver
18 of the report of waste discharge in February?

19 MS. OKUN: Yes, I can. The board
20 meeting is scheduled for February 13th and 14th.

21 HEARING OFFICER GEFTER: And is there a
22 document that they would be looking at?

23 MS. OKUN: Yes, there is.

24 HEARING OFFICER GEFTER: Is that
25 available so that we could have a copy of it?

1 MS. OKUN: I don't know whether the
2 draft waiver has been issued to the public yet,
3 but I can check.

4 MR. KRAMER: Actually it's been attached
5 to High Desert's answer to the complaint as
6 exhibit, I forget the --

7 MS. OKUN: Okay.

8 MR. CARROLL: That's V, as in Victor.
9 It's a November 9th cover letter from the LaHanton
10 Regional Board with two attachments. The first
11 attachment being a proposed resolution. The
12 second attachment being an addendum that was
13 prepared by LaHanton pursuant to the California
14 Environmental Quality Act.

15 HEARING OFFICER GEFTER: The exhibit
16 that you have submitted, exhibit V, has that been
17 in any way amended since November before it will
18 be presented to the board in February?

19 MS. OKUN: I believe there will be some
20 changes, but those are not published yet. And
21 they will be relatively minor, I believe.

22 HEARING OFFICER GEFTER: Do you know
23 when they will be available to the public?

24 MS. OKUN: No, I don't. I can find out.

25 PRESIDING MEMBER LAURIE: Okay.

1 HEARING OFFICER GEFTER: All right.

2 We'll move on to condition 12, which is a water
3 treatment and monitoring plan that specifies the
4 type and characteristics of the treatment process.
5 And would identify any waste streams and disposal
6 methods.

7 And then the verification talks about a
8 statistical approach to analyzing water quality
9 monitoring data and determining water treatment
10 levels. And I think this is the one that has that
11 language that we are concerned about, in terms of
12 approaching background levels or meeting drinking
13 water standards. There's been quite a bit of
14 paperwork filed on this issue.

15 The verification requires this
16 information 90 days prior to the banking of State
17 Water Project water within the regional aquifer.

18 So, as we understand, banking doesn't
19 begin until September of 2002, so --

20 MR. LEDFORD: The issue is not
21 prospective if the plant won't comply.

22 HEARING OFFICER GEFTER: What does that
23 mean?

24 MR. LEDFORD: That means they're
25 building a plant that doesn't comply with the

1 condition. That's the complaint.

2 And the plans they submitted and that
3 were approved by the Commission call for reverse
4 osmosis, including the descriptive analysis in the
5 letter.

6 PRESIDING MEMBER LAURIE: Well, that
7 appears to be contested.

8 MR. LEDFORD: Well, that would be, that
9 would be -- that's the complaint, and what
10 evidentiary material that we would propose.

11 PRESIDING MEMBER LAURIE: Okay, but I
12 have no desire to, or frankly no intent -- and
13 Commissioner Pernell and I will be discussing the
14 matter -- to reopen the issue of what it is that
15 we approved and what it is that we didn't -- did
16 or did not approve. That will be determined by a
17 review of the record.

18 And new evidence is not relevant in that
19 regard. So if there's an allegation that there's
20 a certain characteristic that was approved as part
21 of the project then that would be included in the
22 record of the decision. And we would conduct a
23 review of that record.

24 We do not need a witness to read the
25 record to us.

1 MR. LEDFORD: That's not my issue.

2 PRESIDING MEMBER LAURIE: I'm sorry?

3 MR. LEDFORD: That's not my issue. My
4 issue is that they comply to a point, and then
5 they've requested a change. And this is now a
6 change, a change, and actually that's their
7 testimony, that they are requesting a change. And
8 I believe that the evidence amongst all of the
9 parties that have something to say about this
10 believe that it's a change.

11 HEARING OFFICER GEFTER: Is it a change
12 from what the condition says?

13 MR. LEDFORD: It's a change from what
14 was approved by the Commission based on the
15 evidence in the record.

16 HEARING OFFICER GEFTER: Well, we're
17 looking at the condition, and we don't see
18 anything about reverse osmosis listed in the
19 condition.

20 MR. LEDFORD: The applicant proposed
21 what they were going to do. It's just like they
22 proposed to build three power trains to make a 720
23 megawatt power plant.

24 They proposed to build a reverse osmosis
25 plant. They submitted evidence. The evidence was

1 admitted into the record; it calls for a reverse
2 osmosis plant.

3 Prior to the start of construction they
4 submitted what they called approved plans, which I
5 say are schematic drawings. Nevertheless, they
6 say they're approved plans. There's even a
7 description of the reverse osmosis process in,
8 quote, their approved plans.

9 Since the time that they submitted the
10 plans and you issued a will-proceed letter there
11 has not been any letter from the Commission
12 saying, by the way, you can change this water
13 treatment process to ultrafiltration. At least I
14 haven't found it. And they haven't submitted it.

15 We have what they say are approved
16 plans. The approved plans call for reverse
17 osmosis.

18 MR. CARROLL: If I may respond? First
19 of all, with respect to the timing on this
20 condition, as has been pointed out, the condition
21 requires the water treatment and monitoring plan
22 to be submitted 90 days prior to groundwater
23 banking. We are outside of that timeframe. We
24 have not yet reached that timeframe.

25 We stipulated earlier in the day that we

1 have not submitted the final water treatment and
2 monitoring plan to the CEC. But that,
3 notwithstanding, we don't believe that there's a
4 violation of the condition here, because that time
5 period has not -- the time for submitting that has
6 not come yet.

7 The Committee has indicated a desire to
8 take up the merits of this notwithstanding the
9 fact that it's not right, and we're prepared to do
10 that.

11 The fact of the matter is that the
12 decision and the conditions did not specify a
13 particular water treatment methodology. It
14 specified a performance standard.

15 A typical water treatment train was
16 included in the application for certification.
17 And that typical train did include reverse
18 osmosis.

19 Over the course of time, as the designs
20 for the project have been finalized, and we've
21 engaged in discussions with the water agency, it
22 was concluded that the typical train that was
23 included in the application for certification
24 would not have met the performance standards set
25 forth in condition 12.

1 And therefore, the proposed water
2 treatment methodology was supplemented to include
3 the current proposal which does meet the
4 performance standard set forth in condition 12.

5 HEARING OFFICER GEFTER: So the new
6 proposal was based on discussions with the
7 LaHanton Board?

8 MR. CARROLL: And Victor Valley Water
9 District. They also had the March 27th, the final
10 design drawings that we've been referring to, the
11 March 27th submittal has been supplemented twice.
12 Once with the report of waste discharge, which was
13 submitted to the LaHanton Regional Water Quality
14 Control Board setting forth the current proposed
15 treatment methodology. That document was also
16 provided to the CEC.

17 And it was supplemented once again just
18 recently on January 10th of 2002. So, it is true
19 that there is a document in the record, the
20 application for certification, and the March 27th
21 submittal, that talks about reverse osmosis.

22 But, as I said, as the project plans
23 have been finalized and based in part on
24 discussions with the agencies, the proposed
25 treatment methodology has moved away from reverse

1 osmosis.

2 That doesn't mean that it doesn't comply
3 with the condition 12. In fact, we believe that
4 the current plan does comply with condition 12.
5 And the previously proposed plan, as it turned
6 out, would not have complied with the performance
7 standards in condition 12.

8 MR. LEDFORD: With all due respect if
9 that is the position, the record should be
10 reopened. Those issues should be -- evidence
11 should be provided. The public should have the
12 right to submit evidence. And if the change is
13 going to be made, it should be made in a public
14 forum with appropriate notice and documents and
15 witnesses to support a change.

16 PRESIDING MEMBER LAURIE: Does staff
17 have a position on the issue of an alternative to
18 the reverse osmosis process?

19 MR. KRAMER: Yes. Staff does not
20 believe that reverse osmosis was strictly required
21 by the condition. The condition instead set a
22 performance standard, and therefore the issue is
23 whether the current proposed treatment method
24 meets the performance standard.

25 And we would encourage the Committee to

1 try to, even though technically the decision date
2 perhaps is not upon us, we don't think postponing
3 it on the grounds of ripeness will serve this
4 process well because we need guidance on this
5 point.

6 We need a decision as to what the
7 condition means so that we can either move on with
8 the current proposal or as we -- we don't believe
9 that if changes are necessary, then those can be
10 designed into the project so that it can keep on
11 the schedule and eventually provide power to the
12 people of California.

13 PRESIDING MEMBER LAURIE: Okay,
14 understand. Thank you.

15 HEARING OFFICER GEFTER: Ms. Okun, are
16 you still on the line?

17 MS. OKUN: Yes, I am.

18 HEARING OFFICER GEFTER: Yes. Do you
19 have any comment on the role of the LaHanton Board
20 with respect to the design for the treatment
21 facility?

22 MS. OKUN: Well, this is something that
23 they're considering in issuing the waiver of WDRs
24 which is on the February agenda. Obviously the
25 board hasn't taken any action yet. They'll be

1 considering a CEQA addendum which considers
2 environmental impacts of the ultrafiltration
3 system which weren't addressed in the CEC final
4 decision, and considering the waiver, itself, in
5 February.

6 PRESIDING MEMBER LAURIE: And so there
7 would be an environmental analysis of the process
8 to be utilized?

9 MS. OKUN: Yes. The LaHanton Regional
10 Board has prepared and circulated an addendum to
11 the CEC's functionally equivalent document that
12 the board will consider in the next meeting.

13 PRESIDING MEMBER LAURIE: And is that a
14 public document yet?

15 MS. OKUN: Yes, it has been circulated.
16 And I believe it was attached to Latham and
17 Watkins' submission, is that correct?

18 MR. CARROLL: Yes, that's right. It's
19 included as exhibit V, as in Victor, along with
20 the proposed resolution from the LaHanton Board to
21 the answer.

22 PRESIDING MEMBER LAURIE: Thank you.

23 HEARING OFFICER GEFTER: Also, is Mr.
24 Brill on the line? Are you still on the line, Mr.
25 Brill?

1 MR. BRILL: Yes, I am.

2 HEARING OFFICER GEFTER: Do you have any
3 comment on the treatment facility, is your agency
4 involved in any respect?

5 MR. BRILL: From a regulatory standpoint
6 I don't believe so. The only position we have
7 made, and that was part of our analysis when we
8 looked at the environmental documentation, we came
9 to the conclusion that the proposed
10 ultrafiltration is appropriate to meet the water
11 quality objectives from MWA's standpoint,
12 recognizing, of course, that we look at things in
13 a different light than the Regional Board does.

14 We basically use the -- we took a look
15 at the analysis that was -- who conducted the
16 analysis. So we basically benchmarked it against
17 drinking water standards and the proximity to
18 nearby wells.

19 I think using the same information that
20 the Regional Board is looking at, and we came to
21 the determination that there was no significant
22 material impact from a water quality standpoint.

23 HEARING OFFICER GEFTER: Thank you.

24 MR. CARROLL: If I may just point out,
25 this process that we've been talking about, in our

1 view, is exactly what was contemplated by
2 condition 12, which states: The project manager
3 shall prepare and submit to the CEC CPM, and if
4 applicable to the LaHanton Regional Water Quality
5 Control Board, for review and approval, a water
6 treatment and monitoring plan that specifies the
7 types and characteristics of the treatment
8 processes, and identify any waste streams in their
9 disposal methods."

10 Our view is that this process that we've
11 been discussing which has been underway, and we
12 believe moving forward, perhaps not as
13 expeditiously as we would have liked, but moving
14 forward in a way that makes sense, receiving input
15 from all of the agencies, is exactly what the
16 Commission intended when it adopted this
17 condition. Rather than specifying at that point
18 any particular treatment methodology, which it did
19 not do.

20 PRESIDING MEMBER LAURIE: Okay.

21 HEARING OFFICER GEFTER: We are then,
22 with respect to condition 13, Mr. Ledford has
23 indicated that he does not oppose severing this
24 issue from the complaint. Therefore we will not
25 be considering condition 13. And we will issue a

1 more formal ruling on that later.

2 Let's look at condition 17, section 1,
3 where it says the project owner shall enter into
4 an aquifer storage and recovery agreement with
5 the Victor Valley Water District. And that it
6 should be provided prior to commencing
7 construction of the project.

8 We have a copy of this agreement that
9 was submitted during the proceeding; it was
10 submitted into the record on February 18, 2000.
11 And we understand that respondent believes that is
12 the appropriate document. Mr. Ledford, do you
13 have any evidence to indicate that the respondent
14 has not submitted this document into the record?

15 MR. LEDFORD: The testimony in the
16 record was that that document was nullified by a
17 unanimous vote of the Victor Valley Board of
18 Directors.

19 HEARING OFFICER GEFTER: So you're
20 saying that the document is not valid?

21 MR. LEDFORD: That's what the testimony
22 by Mr. Hill and Mr. Welch was at the January 18th
23 hearings.

24 PRESIDING MEMBER LAURIE: Well, it
25 should be pretty easy to determine from the public

1 records of the entity whether or not that
2 agreement was ever approved by the agency.

3 Staff, what evidence do you have
4 indicating that the District took final action on
5 that agreement?

6 MR. KRAMER: Both parties subsequently
7 wrote to Mr. Munro and said that that was not the
8 case. And both of those letters are in the
9 respondent's exhibits, if Mr. Carroll could chime
10 in with the letters.

11 MR. CARROLL: Yes, respondent's exhibit
12 O to its answer to the complaint is an October 16,
13 2001 letter to Mr. Munro from Mr. Hill of the
14 Victor Valley Water District, confirming that the
15 storage and recovery agreement was duly adopted,
16 is in full effect, and incorporates all of the
17 final conditions of certification applied by the
18 Commission.

19 And there's a corresponding letter from
20 Mr. Barnett of the High Desert Power project, that
21 also is to Mr. Munro, contains exhibit N, as in
22 Nancy, to the answer, stating in essence the same
23 thing.

24 MR. KRAMER: On that basis, we're
25 satisfied that the agreement remains in effect,

1 and incorporates the conditions that were
2 ultimately adopted by the Commission after it was
3 executed.

4 PRESIDING MEMBER LAURIE: So it is
5 staff's view that the conditions of the agreement,
6 as duly adopted by the District, do meet the
7 conditions of the project?

8 MR. KRAMER: Satisfies condition 17,
9 yes.

10 MR. LEDFORD: There is at least a memo
11 in the file that some other people on your staff
12 have indicated that they disagreed at a date prior
13 to this time. I'm not sure what those people
14 would testify to today. It is contained as
15 exhibit B of the complaint.

16 MR. KRAMER: And I believe that letter
17 is what precipitated these responses that Mr.
18 Carroll read to you.

19 MR. CARROLL: That's exactly right.
20 There appeared to be some confusion among certain
21 members of the staff whether or not the document
22 incorporated the final conditions of
23 certification. And that confusion was what
24 precipitated the two letters that I just referred
25 to from High Desert and Victor Valley confirming

1 that yes, indeed, in their view, that it does
2 incorporate the final conditions of certification,
3 and they intend to be bound by the final
4 conditions of certification.

5 PRESIDING MEMBER LAURIE: And is that a
6 statement that staff is prepared to stipulate to?

7 MR. KRAMER: Yes.

8 PRESIDING MEMBER LAURIE: Do you have
9 anything else on that point, Susan?

10 HEARING OFFICER GEFTER: No, we'll move
11 on.

12 PRESIDING MEMBER LAURIE: Go ahead and
13 do 19.

14 HEARING OFFICER GEFTER: The last
15 condition that we will be looking at is condition
16 19. That the project owner shall limit any use of
17 the water treatment facilities by the Victor
18 Valley Water District for any other entity for
19 purposes other than providing water to the High
20 Desert Power Plant.

21 And then the verification requires again
22 a copy of the water storage agreement within 30
23 days of its execution, which incorporates these
24 restrictions.

25 At this point the parties have

1 stipulated there is no water storage agreement;
2 however, they also stipulated that they're not
3 banking water at this time. So is this condition,
4 is there any evidence that this condition has not
5 been -- has been violated?

6 MR. LEDFORD: Again, that question was
7 raised by Commissioner Laurie earlier in that the
8 issues relative to what LaHanton is conducting
9 today, in other words their CEQA analysis of the
10 water storage agreement. And the issues that
11 would be relative to a waiver, without having that
12 agreement, the specifics of that agreement in
13 place it is difficult to understand how LaHanton
14 can make a determination as to what they're
15 studying.

16 HEARING OFFICER GEFTER: Well, didn't
17 Mr. Caouette indicate that that water storage
18 agreement would be considered in January, January
19 23rd, I believe, is the date he indicated, which
20 is prior to the LaHanton Board's meeting in
21 February?

22 MR. LEDFORD: Well, the public has asked
23 for drafts of the agreement on a consistent basis.
24 From both Mojave Water Agency and from the Victor
25 Valley Water District. To date no draft

1 agreement, other than the one attached to my
2 complaint, which demonstrates what Victor Valley
3 Water District's ultimate desire to do has been
4 forwarded for anybody's review.

5 So as of today, as I sit here today, I
6 have not seen a water storage agreement. And to
7 the best of my knowledge, LaHanton has not seen a
8 water storage agreement other than exhibit A
9 attached to my complaint.

10 HEARING OFFICER GEFTER: Do you have any
11 evidence that condition 19 has been violated?

12 MR. LEDFORD: That's -- my reply is in
13 absence of having the agreement I don't know how
14 you can get a waiver, which -- I mean you can't
15 just take a piece of the puzzle, you sort of have
16 to take it all.

17 MR. KRAMER: Well, the Commission's role
18 isn't to write data adequacy requirements for some
19 other agency's process. And I think that's what
20 he's saying here, is that he thinks the Commission
21 needs to enforce his view of how LaHanton has to
22 run its operation. That's way beyond the
23 jurisdiction of this Commission.

24 MR. CARROLL: On behalf of the
25 respondent we fail to understand how what LaHanton

1 is doing relates in any way frankly to condition
2 19, which talks about limitations on the Victor
3 Valley Water District's use of the facilities.

4 So, frankly, the connection to what the
5 LaHanton process, while I agree with what has just
6 been said, is a red herring. This condition
7 imposes limitations on what the Victor Valley
8 Water District can do with the water treatment
9 plant. As we stipulated, the water treatment
10 plant hasn't been constructed yet, so there
11 certainly is -- it's impossible for the project to
12 be out of compliance with this condition at this
13 time.

14 The verification for this is the water
15 storage agreement, which we've discussed and
16 stipulated has not been submitted yet, but will
17 be.

18 But I would add that the aquifer storage
19 and recovery agreement, which is not included as
20 the verification here, in fact acts as an
21 independent verification of these issues, because
22 it is binding on VVWD, and as we just discussed it
23 incorporates all the conditions of certification
24 including condition 19.

25 So, we're actually ahead of the game on

1 this condition because we have an independent
2 contractual basis for enforcing these limitations
3 on VVWD even though the water storage agreement
4 hasn't been adopted yet, which is the specified
5 means of verification.

6 MR. LEDFORD: Well, we still haven't
7 talked about the water treatment capacity of the
8 plant, which is evidence that we intend to
9 provide. And we would find that both of those
10 agreements would be out of compliance if we didn't
11 know -- the aquifer storage agreement directly
12 says Victor Valley Water District can store water
13 in the aquifer. It says that. You agreed that
14 they could do that.

15 So, what we need to know is how much
16 water do they intend to store. I provided you
17 with an exhibit to my complaint that said they
18 intend to store 50,000 acrefeet a year with a
19 cumulative balance of 130,000 acrefeet.

20 That was a specific proposal that the
21 Victor Valley Water District made in April of last
22 year to the MWA Board. Ultimately they withdrew
23 it because there was a lot of controversy over
24 that.

25 But the issue is if that's what the

1 intent is, and if this water treatment plant can
2 supply some of that water, then somebody ought to
3 know about it. And you said, also, we're not
4 going to study anybody else's problems, we're not
5 going to look at the regional water management
6 plan, we're not going to deal with LaHanton or
7 MWA, that's for those folks to deal with. That's
8 my recollection of what you said, and I agree.

9 But what those folks are saying is, oh,
10 no, the Energy Commission issued an environmental
11 equivalent document and we're going to get to do
12 all these things, and we're just going to pretty
13 much ignore that.

14 What we have right now is that the
15 Mojave Water Agency approved a contract, the first
16 year's contract, for the City of Victorville to
17 purchase 4000 acrefeet of water for the power
18 plant.

19 And we have a lawsuit that was filed by
20 the City of Barstow on CEQA issues. You can
21 pretty much expect that the same thing is going to
22 happen relative to this water storage agreement.

23 It's just nobody wants to put their arms
24 around the whole puzzle. Somebody is going to, at
25 some point in time.

1 MR. CARROLL: If I may address those
2 points. I think in large part what Mr. Ledford is
3 referring to, what we just heard, and in many of
4 the documents that have been submitted as proposed
5 exhibits, are desires, plans, inquiries on the
6 part of some of the agencies about the potential
7 for utilization of the project's water supplies.

8 We certainly don't have any control over
9 what plans or desires these agencies might have.
10 But what I would say is that all of those plans
11 and desires are subject to the conditions of
12 certification imposed by the project.

13 So the fact that there may be an email
14 out there where the Victor Valley Water District
15 indicates some long-term desire to utilize some of
16 the project facilities, or the MWA indicates some
17 inquiry as to whether or not it would be able to
18 use the project facilities doesn't change the fact
19 that any such future use is subject to, again, not
20 only the conditions of certification posed by the
21 project, but for environmental review.

22 Anything that anybody plans that wasn't
23 part of the Energy Commission's decision with
24 respect to those facilities would be subject to
25 its own review process, its own compliance with

1 the California Environmental Quality Act.

2 So, again, our view is that we've got a
3 lot of red herrings out here, to the extent that
4 an agency has talked about maybe using some of the
5 project facilities in the future. Because, again,
6 everyone, including those agencies, has
7 acknowledged that any such use would need to be
8 consistent with the conditions of certification
9 and any other review process that might be applied
10 to that proposed use.

11 MR. BRILL: This is Kirby Brill. I
12 think I might be able to provide some
13 clarification on this issue.

14 HEARING OFFICER GEFTER: Yes, please, go
15 ahead.

16 MR. BRILL: The draft agreement that Mr.
17 Ledford is referring to was part of an agreement
18 that was intended to be a master storage agreement
19 between the Watermaster of Victor Valley, was
20 intended -- don't recall what the exact numbers
21 are. I think more than 100,000 acrefeet or so,
22 was, again, part of a master kind of --

23 HEARING OFFICER GEFTER: Thank you.

24 MR. CARROLL: If I might add one more
25 thing. All of this was contemplated at the time

1 that condition 19 was adopted, which is the reason
2 that it includes the statement that the project
3 owner shall not allow VVWD or another entity to
4 use the water treatment facility for treatment of
5 water that's injected and then recovered by VVWD
6 unless the Watermaster and VVWD have entered into
7 a water storage agreement, and for which the
8 appropriate lead agency has completed a CEQA
9 review, as required by MWA or an assign.

10 So it was contemplated during the
11 proceedings that there might be some desire in the
12 future for one of these agencies to utilize the
13 treatment facilities. And the Commission made it
14 very clear that that could not be done unless that
15 action was subject to its own review under CEQA.

16 So this is nothing new. This has been
17 the situation since the very beginning.

18 HEARING OFFICER GEFTER: Thank you. Mr.
19 Ledford, I'm not clear what evidence you expect to
20 present that would indicate that the company is in
21 violation of condition 19. This is the third time
22 I've asked you the question, and I still am not
23 clear.

24 MR. LEDFORD: The 24-inch pipeline is
25 designed to handle considerably more than 5800

1 gallons per minute.

2 Kirby, how about telling us what the
3 design capacity of the 24-inch line is?

4 HEARING OFFICER GEFTER: Excuse me, Mr.
5 Ledford, I asked you the question. Give --

6 MR. LEDFORD: Okay.

7 HEARING OFFICER GEFTER: Give me your
8 response.

9 MR. LEDFORD: I'm sorry.

10 HEARING OFFICER GEFTER: Don't ask Mr.
11 Brill to answer your question.

12 MR. LEDFORD: Well, you know, the
13 evidence is going to be that the 24-inch pipeline
14 will handle 24 to 25 cfs per minute. That's
15 something well in excess, more than double the
16 5800 gallons per minute that the project requires.

17 And the evidence will go on to show that
18 the water treatment plant is larger than 5800
19 gallons per minute. And the evidence will go on
20 to show that there's a relatively good fight going
21 on between the City of Victorville and the Victor
22 Valley Water District as to who owns the
23 priorities, the excess capacity of the lines,
24 who's going to get what, when. And who's going to
25 issue what easements, and whether or not -- this

1 is --

2 HEARING OFFICER GEFTER: How is that
3 relevant to condition 19?

4 MR. LEDFORD: Oh, how is it relevant to
5 condition 19? Well, I guess it's still
6 prospective. But the issue is if you don't
7 resolve it, if somehow you don't resolve it, if
8 you don't resolve it, it's going to get litigated
9 someplace else. It could be resolved, it
10 potentially could be resolved right here. But the
11 condition, as it is now, will not resolve it.

12 ASSOCIATE MEMBER PERNELL: Mr. Ledford,
13 it appears that you're trying to draw us into
14 somebody else's confrontation as it relates to
15 water. And I'm just not seeing -- I would agree
16 that I'm not seeing the relevance here.

17 If it's because the 24-inch pipe is
18 larger and therefore there's a speculation that
19 somebody's going to do something with the water
20 other than the plant, and there's a condition that
21 kind of covers that, that if any of this water is
22 going to be used, that you have to do a CEQA
23 analysis and all of those, --

24 MR. LEDFORD: Well, it was --

25 ASSOCIATE MEMBER PERNELL: -- types of

1 conditions, so I'm not, I'm just not seeing that
2 at this point.

3 MR. LEDFORD: Condition 1 and
4 condition -- I mean condition 1 in its entirety,
5 but condition 1E, we go back to that, was that the
6 facilities would only be sized for the project's
7 use. The facilities are oversized.

8 Condition 19 was kind of thrown in at
9 the end because we had this whole growth-inducing
10 issue, and staff said, boy, we haven't had time to
11 analyze the oversized capacity of the lines, and
12 we can take care of this growth-inducing issue
13 because we can issue a condition.

14 Well, it just isn't going to work. And
15 what is going to happen is instead of attempting
16 to resolve the issue, trying to find a way to
17 resolve either downsizing the utilities, having
18 MWA own the pipeline instead of the Victor Valley
19 Water District, taking the political control out
20 of it so you'll end up with a reliable plant,
21 whether they have to use two-for-one water
22 sometime down the road, those other issues.

23 PRESIDING MEMBER LAURIE: Okay, what
24 we're going to do is take a ten-minute break so
25 the Committee can confer. And we'll reconvene at

1 about three minutes of.

2 And we'll talk about what our next steps
3 are going to be.

4 (Brief recess.)

5 PRESIDING MEMBER LAURIE: The meeting of
6 the Siting Committee is hereby reconvened.

7 It is the intent of the Siting Committee
8 to act as follows:

9 One, the Committee, at this time, does
10 not see any benefit to its investigation of
11 holding a testimonial hearing as previously
12 scheduled.

13 Two, it is the Committee's intent to
14 review the allegations and the documents currently
15 submitted, and where a prima facie case has not
16 been established, to dismiss those allegations.

17 Three, the Committee will conduct a
18 review of the documents that have been submitted,
19 as well as a review of the record, and determine
20 at that point the necessity for formal testimony,
21 if any.

22 Four, the Committee will consider those
23 issues which, albeit may be not directly related
24 to violation, but appropriate for clarification in
25 the form of modification of language of the

1 conditions or verification, based upon the record
2 of the proceedings, and the documents previously
3 submitted.

4 Before the end of the day today we will
5 issue an order regarding the above-stated matters.

6 Now, before I go to Commissioner
7 Pernell, let me ask Ms. Gefter if clarification of
8 my statements is consistent with our discussion.

9 HEARING OFFICER GEFTER: Yes, we are all
10 in agreement with the statements of Commissioner
11 Laurie.

12 PRESIDING MEMBER LAURIE: Commissioner
13 Pernell, do you have any comment at this point?

14 ASSOCIATE MEMBER PERNELL: No comment.
15 I would just agree with what's been stated, and
16 the discussions that the Committee has had as of a
17 couple of minutes ago.

18 PRESIDING MEMBER LAURIE: The Committee
19 will, as noted, issue a clarifying order before
20 the end of the day. And will communicate with you
21 via telephone or fax, or the most propitious
22 method.

23 Ms. Gefter, do you need any additional
24 information from the parties at this time?

25 HEARING OFFICER GEFTER: Not at this

1 time. I did want to make it clear for everyone
2 that the hearing that is currently scheduled on
3 Wednesday and Thursday is canceled.

4 MS. OKUN: Okay, thank you.

5 HEARING OFFICER GEFTER: And a written
6 order, as Commissioner Laurie indicates, will be
7 served on all the parties by the end of the day,
8 which would incorporate his ruling as he just
9 expressed it.

10 MS. OKUN: And will you also send a copy
11 of that to the LaHanton Board. We're not
12 technically a party to this.

13 HEARING OFFICER GEFTER: Yes, LaHanton
14 is on our proof of service.

15 MS. OKUN: Okay.

16 HEARING OFFICER GEFTER: All of the
17 water agencies that are involved are on the proof,
18 and they will get copies of the order.

19 MS. OKUN: Thank you.

20 MR. LEDFORD: Is the order that you
21 anticipate issuing this afternoon an appealable
22 order to the full Commission?

23 PRESIDING MEMBER LAURIE: Yes, sir.

24 MR. LEDFORD: Thank you.

25 PRESIDING MEMBER LAURIE: Well, let me

1 ask. Ms. Gefter, I assume that to be the case?

2 HEARING OFFICER GEFTER: Yes.

3 PRESIDING MEMBER LAURIE: The meeting is
4 adjourned, thank you very much.

5 HEARING OFFICER GEFTER: Thank you.

6 (Whereupon, at 12:10 p.m., the
7 conference was concluded.)

8 --o0o--

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Conference; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18th day of January, 2002.

PETER PETTY

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

□